HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.12792 of 2007

Date : 1-10-2007

Smt.Shilap R.Patel w/o.Rajesh Patel .. Petitioner

Vs.

Government of India,
represented by its Deputy Secretary,
Ministry of Shipping, Road Transport &
Highways, New Delhi and another .. Respondents

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<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri Noushad Ali

^ Counsel for respondents : Government Pleader for Revenue
Sri S.S. Varma

? CASES REFERRED :

1. I(2006) CLT 108 (S.C.)
2. AIR 1996 S.C. 675
3. J.T. 1995(8) S.C. 599

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.12792 of 2007

ORDER:

1. This Court ordered Notice before admission on 21-6-2007 and a counter affidavit was filed.

2. This Court issued *rule nisi* on 11-9-2007.

3. The Writ Petition is filed for a Writ of Mandamus or any other appropriate writ, order or direction declaring the Notification SO.No.1489(E) dated 17-10-2005 and the consequential Notification SO.No.1732(E) dated 9-10-2006 issued by the 1st respondent as illegal, arbitrary and violative of Article 300-A of the Constitution of India and consequently to set aside the same and to pass such other suitable orders.

4. The petitioners made several averments in the affidavit filed in support of the Writ Petition. A counter

affidavit was filed by the 2nd respondent.

5. Sri Noushad Ali, the learned Counsel representing the writ petitioners had taken this Court through the respective pleadings of the parties and also the specific grounds raised attacking the impugned notification and the consequential notification as well and would maintain that the impugned notification is vague and no opportunity had been given to the petitioners to file their objections to the proposed acquisition of their lands. The learned Counsel also would m that the impugned notification merely mentions the survey numbers and the extents of the lands proposed to be acquired and the notification also merely mentions the type of land whether private or Government and the details which are vital for determining the compensation had not been disclosed. The learned Counsel also pointed out that the notification SO.No.1732/(E) dated 9-10-2006 issued under Section 3D of The National Highways Act, 1956, hereinafter in short referred to as “Act” for the purpose of convenience, is not sustainable in Law as the same is continuation of the notification No.SO.1489(E) dated 17-10-2005 issued under Section 3A of the said Act. The learned Counsel also pointed out that new entries had been brought with the names of the land owners, interested persons and the

plot numbers and these new entries suffer from several material defects. Further, the learned Counsel pointed out that there is no necessity of acquiring this land at all since it is far away from the main road. The learned Counsel had explained several factual details in this regard. The learned Counsel also would submit that when the notification itself is invalid, the mere passing of the award would not alter the situation and when once this Court is satisfied that the notification is liable to be quashed, automatically the award also is liable to be quashed. The learned Counsel however would submit that if the respondents are otherwise interested, in the event of this Court coming to the conclusion that no useful purpose would be served by acquiring the impugned notification at this stage, let the writ petitioners be properly compensated taking the relevant date to determine the compensation as the date when the possession of the land was taken by the respondents from the writ petitioners and let the claim of interest on amount of compensation so determined be decided in accordance with Law by the appropriate authority. The Counsel also placed strong reliance on **Competent Authority Vs. Bangalore Jute Factory and others** [1].

6. The learned Government Pleader for

Revenue made certain submissions virtually adopting the stand taken by the 2nd respondent in the counter affidavit.

7. Sri S.S. Varma, the learned Counsel representing the 2nd respondent had pointed out to the relevant portion of the records produced before this Court and had taken this Court through the different provisions of the Act and would maintain that these are notifications concerned with public interest and because of the interim order made by this Court, the work is stalled. The learned Counsel also would submit that when once the award is made, the question of challenging the notification would not arise and the same is impermissible. Even if the petitioners are entitled to higher compensation, if any, the remedy is elsewhere and the petitioners may have to follow the procedure as specified under the provisions of the Act and hence the reliefs prayed for in this Writ Petition cannot be granted. The Counsel also relied upon certain decisions.

8. It is averred in the affidavit filed in support of the Writ Petition that the 1st petitioner is the owner of land situate in Sy.No.439D/3F and Sy.Nos.443/1B and 443/5A1 of Kallur Mandal, Kurnool District to an extent of Ac.0-07 cents in Sy.No.439D/3F and to an extent of Ac.0-09 cents in Sy.Nos.443/1B and 443/5A1. It is further

stated that the 1st petitioner had established a weigh bridge on the land in Sy.No.439D/3F. It is also further stated that the 2nd petitioner is the owner of land in Sy.No.444/2 of Kallur village, Kurnool District to an extent of 2¾ cents and he had constructed a house on the said land and residing there with his family. The total extent of land in Sy.No.439D/3F is about Acs.450 cents and in Sy.Nos.443/1B and 443/5A1, it is about Acs.2.50 cents. It is further stated that the 1st respondent in order to acquire some land for widening N.H.No.7 on the stretch of land from K.M. 203.002 to K.M.293.000 (Hyderabad-Bangalore Sec.) in Kurnool District appears to have issued a notification SO.No.1489(E) dated 17-10-2005 under Section 3A(1) of the National Highways Act, 1956. Under the said notification, the 1st respondent appears to have invited objections from the persons interested in the land. The 2nd respondent had been designated as the Competent Authority for the said purpose. It is further stated that in the aforesaid notification no details were given with reference to the owners/possessors of the lands whose lands were proposed to be affected. Vague particulars were given indicating only Survey numbers, type of land such as private or Government and the area proposed to be covered. The area proposed to be

covered in each Survey Number ranges from Ac.0.01 to Ac.8.51 cents. Inasmuch as the aforesaid notification did not disclose the names of the persons who were likely to be affected and inasmuch as the notification was not published in prominent vernacular local newspapers, the petitioners could not file their objections. The 1st respondent ultimately issued a notification SO.No.1732(E) dated 9-10-2006 under Sec.3D(1) and Sec.3D(2) of the Act. In the said notification the names of the petitioners were shown as owners/interested persons. Subsequently the 2nd respondent issued a notification No.2301/02/2006/PIV-ATP dated 24-11-2006 published in Newspaper Vaartha dated 1-12-2006 calling upon the interested persons to appear before him on 5-12-2006 along with the documents to support their ownership. The petitioners having noticed the same objected for the acquisition of the land without their knowledge and without notice to them, but the 2nd respondent expressed his inability to entertain any objection as the petitioners did not file the objections to the draft notification dated 17-10-2005 and hence the petitioners are constrained to file the present Writ Petition and certain Grounds also had been raised attacking the notifications impugned in the Writ Petition.

9. In the counter affidavit filed by the 2nd respondent it is stated that the development and maintenance of National Highway-7 was entrusted to National Highway Authority of India as per National Highway Authority of India Act 1988. National Highway Authority of India had taken up the widening of existing two lanes of National Highway-7 as part of North-South corridor. Extensive survey work had been carried out by the D.P.R. Consultants M/s.DALAL MOTT MAC DONALD from K.M. 203.00 to K.M. 293.00 of Hyderabad-Bangalore section and proposed the alignment based on the site consideration and also considering various technical aspects. Accordingly, National Highway Authority of India had initiated land acquisition proceedings pertaining to the petitioners site abutting National Highway-7 of Hyderabad-Bangalore section which is inevitable for four lane widening. It is also further stated that it is an admitted fact that Section 3A Notification dated 29-8-2005 under the Act was got published in the prominent local Newspapers in vernacular language “The Eenadu” on 8-10-2005 and in the “The Indian Express” on 9-10-2005. Before issuing the Notification under Section 3A of the Act, a survey was conducted and stones were erected showing the extent of

sites affecting in widening of the road. The petitioners are well aware of the fact that their land is getting affected in widening of the road and acquisition of their shops/sites by the National Highway Authority of India. It is also further stated that Section 3A Notification under the Act was issued in the standard format adopted by the National Highway Authority of India as per the Act in which only survey numbers and extent of areas proposed to be acquired are mentioned and hence there is no vagueness in the said notification. As per the notification, the petitioners were to file their objections within a period of 21 days from the date of notification. It is also an admitted fact that the petitioners had not filed any objections with regard to the acquisition of their property and therefore they cannot question the notification on flimsy grounds. The petitioners know about the said notification, but could not submit their objections to the 2nd respondent within 21 days as required under the Act and the notification under Section 3A of the Act. The other persons who are interested in the land had submitted their objections within the time and the same had been disposed of by the 2nd respondent after affording opportunity of hearing the objections. The petitioners land is abutting to the road side margin and it is not true to say that the land of the

petitioners is situate away from the main road. It is also further stated that the 2nd respondent had passed the Award with regard to the land in Sy.No.443/1B, 443/5A1 and 443/9A1. With regard to Sy.No.439D/3F, Award was not passed because the other person in the same Survey number had filed W.P.No.378/2007 and both the petitioners had participated in the Award enquiry and had claimed the compensation. The 1st petitioner had also given an indemnity bond on Rs.100/- non-judicial stamp paper that there is no dispute or there is no possibility of any dispute about the ownership or interest in the land acquired in Sy.Nos.443/1 and 443/5A1 of Kalluru village and hence the petitioners have no right to question the notification after long gap of nearly two years. It is further stated that in Sy.No.443/9A1 there is a land dispute and as per the Adangal of Kalluru he got registered the land in Sy.No.444/2. The 2nd petitioner is in possession of the land in Sy.No.443/9A1 and he had given an indemnity bond on Rs.100/- non-judicial stamp paper declaring that there is no dispute or there is no possibility of any dispute about the ownership or interest in the land acquired and that the title of the said land is clear. The 2nd petitioner had claimed compensation of Rs.4,00,000/- per cent without any documentary evidence and hence the claim

was rejected and the compensation of Rs.7,040/- is awarded and ordered to be kept under Civil Court deposit and whereas in Sy.No.444/2 of Kalluru there is no acquisition. It is further stated that the contention of the petitioners that in the mentioned Survey numbers the total extent of land is about Acs.4-50 cents and Acs.2-50 cents and whereas in the notification the extent shown is as small as ranging from Ac.0.03 to Ac.0.20 is not correct. The petitioners are liable to be put to strict proof of their contention. The land in Survey number may have Acs.4.00 or above but in the notification the notified extent is exact to the Survey number with sub-division and it means the notified extent exclusively belongs to the persons whose names were shown in the notification under Section 3D of the Act and the subsequent notification under Section 3G of the Act. Hence, there is no confusion either in the notification issued under Section 3A of the Act or in the subsequent notifications. On the other hand, the petitioners had participated in the Award enquiry and as such they cannot question any of the notifications on flimsy grounds that they do not know about the notifications or on any other ground. The extent of land in each Survey number under acquisition is shown in Square Meteres which is equivalent to acres and cents even after conversion in terms of 40 sq. matters. = 1 cent.

Hence, there is no variation in the extent furnished in the notifications under Section 3A dated 17-10-2005 and or under Section 3D dated 9-10-2006 of the Act. It is also further stated that the alignment was approved based on the D.P.R. Consultants proposals and the DPR Consultants had followed the norms while designing the Highway. The radius of curve in front of the land of the petitioners is 2000m whereas as per IRC radius more than 500m is permitted and hence there is no technical fault in the design. It is further stated that the authorities had taken all steps to reduce the cost of widening of the road either by paying compensation or construction of bridges wherever necessary. The estimation of the petitioners for widening of the road at their place is hypothetical and not based on any merits. It is also further stated that after following the procedure, a notification under Section 3D(1) of the Act was got published on 9-10-2006. As per the Act, under Section 3D(2), on the publication of the declaration under Section 3D(1), the land shall vest absolutely in the Central Government free from all encumbrances. As such, the land of the petitioners shall vest with the Central Government and the petitioners are entitled for compensation from the 2nd respondent. Further specific stand is taken that the alignment proposal

was fixed by D.P.R. Consultants keeping in view the geometrics of the road, road safety during construction and after construction etc., and as such the change of alignment for the benefit of an individual cannot be considered. The entire procedure for acquisition of the land in question had been followed under the Act. It is also further stated that the alignment was approved based on the D.P.R. Consultants proposals and the DPR Consultants had followed the norms while designing the Highway. The radius of curve in front of the land of the petitioners is 2000m whereas as per IRC radius more than 500m is permitted and hence there is no technical fault in the design. It is further stated that the authorities had taken all steps to reduce the cost of widening of the road either by paying compensation or construction of bridges wherever necessary. The estimation of the petitioners for widening of the road at their place is hypothetical and not based on any merits. It is also further stated that after following the procedure, a notification under Section 3D(1) of the Act was got published on 9-10-2006. As per the Act, under Section 3D(2), on the publication of the declaration under Section 3D(1), the land shall vest absolutely in the Central Government free from all encumbrances. As such, the land of the petitioners shall vest with the Central Government and the petitioners are

entitled for compensation from the 2nd respondent. Further specific stand is taken that the alignment proposal was fixed by D.P.R. Consultants keeping in view the geometrics of the road, road safety during construction and after construction etc., and as such the change of alignment for the benefit of an individual cannot be considered. The entire procedure for acquisition of the land in question had been followed under the Act. It is further stated that as per the direction of this Court in W.P.M.P.No.15962/2007 in W.P.No.12792/2007 the work in progress was stalled which involves huge loss to the public exchequer and unless this Court vacates the said interim directions granted on 21-6-2007, irreparable loss and damage would be caused to the public money and the public at large would suffer for non-progress of the widening of the road at the petitioners place.

10. The Act, Act 48/1956 is an Act to provide for declaration of certain highways to be national highways and for matters connected therewith. Section 3 of the Act deals with **Definitions** and Section 3(a) defines 'competent authority' as "*In this Act, unless the context otherwise requires 'competent authority' means any person or authority authorized by the Central Government, necessary notification in the Official Gazette, to perform*

the functions of the competent authority for such area as may be specified in the notification". Section 3B of the Act deals with **Power to enter for survey, etc.** Section 3C of the Act deals with **Hearing of objections.** Section 3D of the Act deals with **Declaration of acquisition.** Section 3E of the Act deals with **Power to take possession.** Section 3F of the Act deals with **Right to enter into the land where land has vested in the Central Government.** Section 3G of the Act is another important provision which deals with **Determination of amount payable as compensation** and the said provision reads as hereunder :

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which

will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of Section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by an arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under the Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration –

(a) the market value of the land on the date of publication of the notification under Section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking

possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

Section 3H of the Act deals with **Deposit and payment of amount.** Section 3J of the Act dealing with **Land Acquisition Act 1 of 1984 not to apply** specifies "*Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act".* It is needless to say that though Section 3A of the Act may be to some extent akin to Section 4 of the Land Acquisition Act, on a careful examination of the language, this provision is not in *pari materia* or exactly the same as that of the corresponding provision under the Land Acquisition Act. Sub-section (2) of Section 3A of the Act simply says *"Every notification under sub-section (1) shall give a brief description of the land".* Sub-section (3) of Section 3A says "*The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language".*

11. In **State of Haryana and others Vs. Dewan**

Singh and others [2] the Apex Court while dealing with the Award made by the Collector under the Land Acquisition Act held that after the Award is made by the Collector under the Land Acquisition Act, the notification under Section 4 of the Land Acquisition Act or declaration under Section 6 of the said Act after making the Award cannot be challenged since the same is impermissible. Reliance also was placed on **Mohanji and another Vs. State of U.P. and others** [3] wherein the Apex Court while dealing with the Award made under the Land Acquisition Act observed that in view of the fact that no piecemeal Award by making a subsequent award after the expiry of two years is contemplated in Law, the Award must be construed as the whole Award made under Section 11 awarding compensation for the entire area of Ac.0.99 cents with no compensation awarded for the building and the appellants could claim compensation for the building by seeking a reference under Section 18 of the said Act. No doubt, these decisions are under the Land Acquisition Act.

12. The relevant provision of the non-applicability of Land Acquisition Act to the acquisition under the National Highways Act, 1956, i.e., Section 3J of the Act, already had been referred to supra. However, it was

contended by the learned Counsel representing the 2nd respondent that the same principle is applicable even in the case of acquisition under this Act. The learned Counsel representing the writ petitioners placed strong reliance on the decision of the Apex Court referred (1) supra wherein the Apex Court while dealing with the provisions of the Land Acquisition Act and also the provisions of the Act in question in the present case observed at para-15 :

> "Normally, compensation is determined as per the market price of land on the date of issuance of the notification regarding acquisition of land. There are precedents by way of judgments of this Court where in similar situations instead of quashing the impugned notification, this Court shifted the date of notification so that the land owners are adequately compensated. Reference may be made to: (a) *Ujjain Vikas Pradhikaran v. Rajkumar Johri and others (1992) 1 SCC 328, (b) Gauri Shankar Gaur and others v. State of U.P. and others (1994(1) SCC 92, (c) Haji Saeed Khan and others v. State of U.P. and others (2001(9) SCC 513).* In that direction the next step is what should be the crucial date in the facts of the present case for determining the quantum of compensation. We feel that the relevant date in the present case, ought to be the date when possession of the land was taken by the respondents from the writ petitioners. This date admittedly is 19th February, 2003. We, therefore, direct that compensation payable to the writ

petitioners be determined as on 19th February, 2003, the date on which they were deprived of possession of their lands. We do not quash the impugned notification in order not to disturb what has already taken place by way of use of the acquired land for construction of the national highway. We direct that the compensation for the acquired land be determined as on 19th February, 2003 expeditiously and within ten weeks from today and the amount of compensation so determined be paid to the writ petitioners after adjusting the amount already paid by way of compensation within eight weeks thereafter. The claim of interest on the amount of compensation so determined is to be decided in accordance with law by the Appropriate Authority. We express no opinion about other statutory rights, if any, available to the parties in this behalf and the parties will be free to exercise the same, if available. The compensation as determined by us under this order along with other benefits, which the respondents give to parties whose lands are acquired under the Act should be given to the writ petitioners along with what has been directed by us in this judgment."

13. In the light of the respective stands taken by the parties, the provisions of the Act referred to supra and also the language employed in Section 3A of the Act and on a careful scrutiny of the notifications issued, this Court is of the considered opinion that the notifications as such do not suffer from any legal infirmity warranting any

interference by this Court under Article 226 of the Constitution of India and hence the said notifications are not liable to be quashed. However, in the light of the ratio laid down by the Apex Court in the decision referred (1) supra, which had been decided in the context of the Act and the notification under Section 3A of the Act, though the impugned notifications are left untouched, it is made clear that the relevant date to determine the compensation to be taken as the date when possession of the land had been taken by the respondents from the writ petitioners and the claim of interest on the amount of compensation so determined to be decided in accordance with Law by the appropriate authority.

14. With the above directions, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

Date : -9-2007

L.R. copy to be marked : YES / NO

[1] I (2006) CLT 108 (S.C.)

[2] AIR 1996 S.C. 675

[3] J.T. 1995(8) S.C. 599